

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS ADOLPHUS,

Petitioner,

v.

CASE NO. 08-12707
HONORABLE AVERN COHN

LLOYD RAPELJE,

Respondent.

_____ /

**ORDER GRANTING PETITIONER'S MOTION TO REISSUE ORDER TO FOR
ENLARGEMENT OF TIME (Doc. No. 11)
AND
REIMPOSING TIME LIMITS ON PETITIONER FOR EXHAUSTING HIS CLAM AND
RETURNING TO THIS COURT**

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner challenges his second degree murder conviction for which he was sentenced to a term of 18-30 years imprisonment. Respondent filed a response, contending that the petition should be dismissed without prejudice because Petitioner has not exhausted his ineffective assistance of counsel claim. Petitioner agreed that the claim was not exhausted and on March 1, 2010 filed a motion to dismiss the petition. On March 22, 2010, the Court entered an order granting Petitioner's motion, staying the case, and imposing time limits on Petitioner for returning to state court and exhausting his claim. See Doc. No. 9. The Court specifically gave Petitioner 60 days in which to file a motion in state court. As explained below, Petitioner did not file a motion within the time limit.

II.

On July 9, 2010, Petitioner filed a paper styled “Motion to Reissue Order or for Enlargement of Time.” Petitioner says that he did not receive a copy of the March 22, 2010 order and has not yet filed a motion in state court. In support, he notes that the docket sheet reflects that the March 22, 2010 order was returned to the Court on March 29, 2010 as “undeliverable.” See Doc. No. 10. The order was mailed to Petitioner’s address of record, the Saginaw Correctional Facility, where he was housed at the time he filed the petition. However, Petitioner was later transferred to the Thumb Correctional Facility. Although he admits he did not file a change of address with the Court, his motion to dismiss bore the Thumb address. Petitioner further states that he was not aware of the Court’s order until he sent a letter to the Clerk on June 16, 2010 inquiring as to the status of his motion. The Clerk responded by sending him a copy of the docket sheet which contained an entry showing the March 22, 2010 order.

III.

Under these circumstances, there is good cause to extend the time in which Petitioner may return to state court.¹ Petitioner’s failure to comply with the 60 day time limit in the March 22, 2001 order was the result of excusable neglect. Accordingly, Petitioner’s motion is GRANTED. See Fed. R. Civ. P. 6(b).

Petitioner must return to state court and present his unexhausted claim in a motion for relief from judgment within **sixty days (60)** of the date of this order. If Petitioner is unsuccessful in state court, he may move to re-open this case, provided

¹As expressed stated in the March 22, 2010 order, the Court stayed, rather than dismissed, the petition because the applicable statute of limitations expired.

that he does so within **sixty days (60)** of exhausting state remedies for his new claims.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: July 14, 2010

I hereby certify that a copy of the foregoing document was mailed to Dennis Adolphus, 576885, Thumb Correctional Facility, 3225 John Conley Drive, Lapeer, Michigan 48446 and the attorneys of record on this date, July 14, 2010, by electronic and/or ordinary mail.

S/Michael Williams
Case Manager, (313) 234-5160